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Supreme Court, U.S.
FILED
AUG 22 1996
CLERK

No. 96-30

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

♦

TONYA M. TINCH, et. al.

v.

CITY OF DAYTON, et. al.

♦

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Sixth Circuit

♦

PETITIONERS' REPLY BRIEF

♦

*Dwight D. Brannon
Dwight D. Brannon & Assoc.
124 East Third Street
Suite 100
Dayton, Ohio 45402
(513) 228-2306

**Counsel for Petitioners*
Tonya M. Tinch, et. al.

34 pp

PARTIES

1. For Petitioner: Tonya M. Tinch, Administratrix of the Estate of Scott E. Tinch; Individually as the surviving spouse of Scott E. Tinch; As Parent, guardian, and next friend of Amanda M. and Justin S. Tinch, Minors, Plaintiff-Appellant, Cross Appellee.

2. For Respondents: City of Dayton; Michael J. Sipes; Russell E. Neville; James E. Newby, Defendant-Appellees, Cross Appellant

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REPLY TO BRIEF IN OPPOSITION

Petitioner wishes to first address Respondents' misstatement of the facts in the case at bar. Respondents' brief in opposition incorrectly states that (1) Scott Tinch argued with Grubbs; (2) that Shaun Tinch and Grubbs entered the kitchen and identified themselves as police officers; and (3) that the police officers identified themselves to the decedent. First, the police officers, Neville and Sipes, did not observe Scott Tinch and Vickie Grubbs argue. Second, Shaun Tinch is the decedent's brother, not a police officer and Vickie Grubbs was a police informant, not a police officer. Most importantly, Neville and Sipes never identified themselves as police officers to the decedent. Respondents do not know the facts and circumstances of this case as does Petitioner, as evidenced by Respondents' inaccurate statement of facts.

In the interests of clarity and brevity, Petitioner will address each section of Respondents' Brief in Opposition hereinafter as presented by Respondents.

I. THE SIXTH CIRCUIT INCORRECTLY DETERMINED IT NEED NOT DECIDE WHETHER A FAMILY MEMBER HAS STANDING TO SUE UNDER 42 U.S.C. §1983 FOR THE WRONGFUL DEATH OF A RELATIVE, WHERE PETITIONER DID INDEED PLEAD SUCH CLAIMS ON HER OWN BEHALF AND ON BEHALF OF THE MINOR CHILDREN.

Petitioner requests this Honorable Court examine Appendix page O-268 of the Petition for Writ of Certiorari, as it clearly pleads, at paragraphs 4 and 5, Tonya Tinch is

bringing the action in her individual capacity as well as the administratrix of Scott Tinch's estate, and the children's claims individually as well. Petitioner's Fifth and Sixth Causes of Action, at App. page O-282, to which Respondents refer in stating that a cause of action under 42 U.S.C. §1983 was not asserted, re-allege all previous paragraphs in the Complaint, thereby including the individual claims of Tonya Tinch and her children. The instant case, therefore, is wholly unlike Purnell v. City of Akron, 925 F.2d 941 (6th Cir. 1991), in that Petitioners *did* plead the individual rights of the wife and children in the case at bar. Respondents, like the Sixth Circuit, seem to have failed to read the Complaint in this case.

Respondents' argue that the Sixth Circuit's opinion in Purnell is consistent with the approach of other circuits, such as the First Circuit in Pittsley v. Warish, 927 F.2d 3 (1st Cir. 1991). First, the Court should note that Pittsley is not a wrongful death case. Even the parenthetical provided by Respondents highlights that they case dealt with rights stemming from familial privacy, not with a cause of action relating to wrongful death. Second, even if the Court should find that Pittsley is on point, Petitioners wish to make the Court aware that the circuits are indeed inconsistent with regard to what familial relationship is necessary for an action for deprivation of constitutional rights, and what degree of state action is necessary with regard to that relationship. For example, the Seventh Circuit in Bell v. City of Milwaukee, 746 F.2d 1205, 1242-48 (7th Cir. 1984), found that sibling relationships differ from parent and child, and similarly, the Eighth and Ninth Circuits differ from each other and the Seventh Circuit regarding such rights, including those of grandparents, other relatives, and friends, as well, with regard to constitutional deprivations resulting from state action. See Mathis v. Schnarr, 502 F.2d 588 (8th Cir. 1979); Kelson v. City of Springfield, 767 F.2d 651 (9th Cir. 1985).

In addition, Respondents cite to this Court's decision in Daniels v. Williams, 474 U.S. 327, 331 (1986) as being consistent with the First Circuit on these issues. In fact, the First Circuit, in both Ramirez v. Garcia, 898 F.2d 224 (1st Cir. 1990) and Santiago v. Garcia, 821 F.2d 822 (1st Cir. 1987), disagree with this Court's decision in Daniels with regard to the relationship necessary to assert a constitutional deprivation, and the action taken by the state against such. Furthermore, this Court presents a different view from Daniels in Roberts v. U.S. Jaycees, 468 U.S. 609 (1984). Therefore, this issue is anything but clear and consistent among the Circuits, as Respondents would have this Court believe. Certiorari should be granted in the case at bar to resolve these issues.

II. THE SIXTH CIRCUIT'S ANALYSIS IN DETERMINING THAT AN ACTION UNDER 42 U.S.C. §1983 IS A PERSONAL ACTION WHICH DOES NOT SURVIVE DEATH IS INCORRECT.

Respondents' argues that an action under 42 U.S.C. §1983 is a personal action which does not survive death. If this were true, imagine the devastating result: officers would know that they are better off killing someone than merely wounding them, because if their victim dies, he can't sue for civil rights violations! Petitioner is certain that this is not the result intended by this Court in its rulings or the Congress when it promulgated 42 U.S.C. §1983.

As the Court can see, the scenario above-described is what makes survivorship actions under 42 U.S.C. §1983 as in the case at bar different than those in Robertson v. Wegmann, 436 U.S. 584 (1978) and Carey v. Piphus, 435 U.S. 247 (1978): they are resulting from a wrongful death

caused by state action, not from another type of 42 U.S.C. §1983 violation, with the death of the Plaintiff later resulting from something else. Indeed, this Court in Robertson avoided this scenario, stating, "We intimate no view, moreover, about whether abatement based on state law could be allowed in a situation in which deprivation of federal rights caused death." Robertson, 436 U.S. at 594. Furthermore, in Robertson, Shaw, the decedent (who started the §1983 action while he was still alive), did not have any relatives that qualified under the Louisiana survivorship statute, as do Plaintiffs in the case at bar with regard to Ohio's statute. Robertson, 436 U.S. at 587. If he had, the action would have been permitted, just as it should have been in the case at bar.

Furthermore, Respondents incorrectly state that Sullivan v. Little Hunting Park, Inc. 396 U.S. 229 (1969), requires the Sixth Circuit expressly follow federal standards, as this Court stated, "[As] we read §1988...both federal and state rules on damages may be utilized, whichever better serves the policies expressed in the federal statutes...The rule of damages, whether drawn from federal or state sources, is a federal rule responsive to the need whenever a federal right is impaired." Sullivan, 396 U.S. at 240. This ruling is inconsistent with that of Robertson's mandating that only state rule applied where §1988 is silent, as described in Justice Blackmun's dissent in Robertson. This inconsistency must be remedied, therefore this Honorable Court should grant certiorari in the case at bar.

III. THE SIXTH CIRCUIT'S LIMITATION OF RECOVERABLE DAMAGES FOR A VIOLATION OF 42 U.S.C. §1983 TO THOSE DAMAGES SUSTAINED BY THE DECEDENT BEFORE HIS DEATH IS INCONSISTENT WITH ITS OWN

PRECEDENT AND THAT OF THE OTHER CIRCUITS.

The Sixth Circuit is inconsistent in its own rulings in that the Court cannot decide whether federal or state law applies with regard to damages in 42 U.S.C. §1983 cases. For example, in Jaco v. Bloechle, 739 F.2d 239 (6th Cir. 1984), the Sixth Circuit resorted to state law to determined the survival of the action and the standing of the personal representative. In addition, the court in Jaco found that the Ohio Survival statue, which would not allow the survival of a 42 U.S.C. §1983 action, was hostile to the Constitution and laws of the United States. Respondents' statement that Jaco limited damages to those damages the decedent personally and actually suffered before death, not that of his survivors which would be recoverable under a separate state action for wrongful death, is incorrect.

In contrast, Sixth Circuit decisions such as Weeks v. Chaboudy, 984 F.2d 185 (6th Cir. 1993); Gordon v. Norman, 788 F.2d 1194 (6th Cir. 1986) and Stengel v. Belcher, 522 F.2d 444 (6th Cir. 1975), the Sixth Circuit held that federal, not Ohio, joint and several liability damages rules applied in 42 U.S.C. §1983 cases. Significantly, the court found that a "federal rule" regarding damages could be found not only in the statutes or Supreme Court decisions, but also in the decisions of other federal courts.

Respondents are searching for consistency that just doesn't exist. In Berry v. City of Muskogee, 900 F.2d 1489 (10th Cir. 1990), the Court held that a federal common law of remedies for 42 U.S.C. §1983 violations should be fashioned to create a uniform rule. Otherwise, as Petitioner's stress in their Petition, a person's life is worth a different amount depending on which Circuit they called home:

> If we were to define §1983 remedies in terms of the state survival action, supplemented by the state wrongful death act, we place into the hands of the state the decision as to allocation of recovery in a §1983 case, and, indeed, whether there can be any recovery at all.

Berry, 900 F.2d at 1506. This lack of uniformity should not exist among the Circuits with regard to a federal statute such as 42 U.S.C §1983. Therefore, this Honorable Court should grant certiorari in the case at bar.

IV. THE SIXTH CIRCUIT'S FINDING THAT OHIO LAW SUPPORTED RECOVERY IN A SURVIVAL ACTION OF DAMAGES FOR A DECEDENT'S PAIN AND SUFFERING BEFORE DEATH UPON A SHOWING OF CONSCIOUS PAIN AND SUFFERING, BUT NOT RECOVERY OF HEDONIC DAMAGES, IS INCONSISTENT WITH OHIO SUPREME COURT PRECEDENT.

Respondents cite to Ramos v. Kuzas (1992), 65 Ohio St.3d 42 (1992), which, in fact, supports Petitioners' point on this subject perfectly. In Ramos, as Respondents correctly state, the Ohio Supreme Court vacated the portion of an award including hedonic damages, because the death was to an infant, who had not developed enough cognitively to appreciate a loss of enjoyment of life and pleasurable activities. However, in the case at bar, the decedent was in his twenties, and could very well appreciate the loss of enjoyment and pleasurable things, as testified to by those who knew him well. Ramos supports the proposition that, if one has the capacity to appreciate such things, then hedonic damages are proper. Fantozzi v. Sandusky Cement Products

Co. (1992), 64 Ohio St. 3d 601 and Siders v. Reynoldsburg (1994), 99 Ohio App.3d 173, concur with Ramos in this respect.

In this respect, the Sixth Circuit's ruling is inconsistent with Ohio Supreme Court precedent on this issue. Any argument to the contrary suggests that one who dies right away has no right to compensatory damages for all that he will miss in his lifetime due to his loss of life, but also that it is better monetarily to kill than injure. This Honorable Court must speak to this issue, as a dangerous message is being sent to this country's law enforcement.

V. THE SIXTH CIRCUIT'S FINDING THAT OHIO LAW SUPPORTED RECOVERY IN A SURVIVAL ACTION OF DAMAGES FOR A DECEDENT'S PAIN AND SUFFERING BEFORE DEATH UPON A SHOWING OF CONSCIOUS PAIN AND SUFFERING, BUT NOT RECOVERY OF HEDONIC DAMAGES, IS INCONSISTENT WITH THE CONSTITUTION AND THE LAWS OF THE UNITED STATES.

Respondents' attempt to definitively state that Scott Tinch "didn't feel a thing" is not only a dangerous way to determine damages, as stated *supra*, but also, simply unsupported by fact. We may never know what Scott Tinch, or anyone else in his circumstance, may have felt during the last few minutes of his life, or what his thoughts and feelings were at that time.

As Respondents state at page 13, damages under §1983 have the purpose of compensating those injured due to a violation of their civil right, and for deterrence of the violator. See Memphis Comm. Schl. Dist. v. Stachura, 477 U.S. 299 (1986); Carey v. Piphus, 435 U.S. 247. What could be a greater injury than being denied the opportunity to

live your life? Or to be denied the opportunity to see your children grow up and help them in the process? Or to be denied the opportunity to do the things one enjoys? Indeed, the case at bar represents the worst possible deprivation of civil rights imaginable: the right to be alive! What civil rights deprivation could possibly deserve more compensation? Furthermore, the police officers and the City in this case were deterred from nothing: $25,000 is pocket-lint for the City of Dayton and its tax-driven machine of attorneys, officers and administrators.

As stated in VI, supra, ruling is inconsistent with the Constitution, including the Due Process clauses of the 5th and 14th Amendments, and the laws of the United States on this issue. Any argument to the contrary suggests that one who dies right away has no right to compensatory damages for all that he will miss in his lifetime due to his loss of life, but also that it is more desirable monetarily to kill then injure. Again Petitioner urges this Honorable Court to speak to this issue, as a dangerous message is being sent to this country's law enforcement.

VI. THE SIXTH CIRCUIT'S AFFIRMANCE OF THE BIFURCATION OF THE CLAIMS AGAINST THE CITY OF DAYTON AND ITS POLICE CHIEF FROM THE CLAIMS AGAINST THE INDIVIDUAL POLICE OFFICERS CONFLICTS WITH UNITED STATES SUPREME COURT PRECEDENT AND THAT OF OTHER FEDERAL CIRCUITS.

Respondents arguments based on City of Los Angeles v. Heller, 475 U.S. 796 (1986) are unfounded, as in that case, the officers were found to have no liability. In the case at bar, the officers were found to have used excessive force, thereby violating the civil rights of the

decedent. See App. A-3 of Petition. Therefore, as Respondents state, citing Monell v. New York City Dept. of Soc. Serv., 436 U.S. 658 (1978), the court had to determine whether a constitutional violation occurred at the hands of the police officers before attempting to fix liability against the City of Dayton.

The jury in the District Court did just that, as Respondents admit at page 17 of their Brief in Opposition, and the Circuit Court, instead of reversing and remanding for a new trial based on this jury finding of liability, erred by affirmed the District Court's bifurcation of the City. Contrary to Respondents' argument that there was little to be accomplished in trying the liability against the City, the City then never received any deterrent effect from their lack of undercover policies and procedures that directly resulted in their officers use of excessive force which killed Scott Tinch. As this Court can clearly see, the Sixth Circuits ruling was completely inconsistent with Monell, and misplaced with regard to Heller.

Furthermore, contrary to Respondents' statement of the procedural history of this case, the City of Dayton was indeed dismissed after bifurcation, thereby eliminating any opportunity for a deterrent to Dayton, which might have resulted in a change in Dayton's way of managing undercover operations.

In addition, Respondents, citing the cases which do indeed show a bifurcation conflict in the Circuits, namely, Garner v. Memphis Police Dept., 8 F.3d 358 (6th Cir. 1993); Hopkins v. Andaya, 958 F.2d 881 (9th Cir. 1992); Rivas v. Freeman, 940 F.2d 1491 (11th Cir. 1991) and Haynesworth v. Miller, 820 F.2d 1245 (D.C. Cir. 1987), are relevant to this case, contrary to Respondents' contention that they are not, because the officers plead qualified immunity in the case at bar. This Honorable Court should therefore grant certiorari to the case at bar, as these conflicts

need to be resolved for the equal administration of justice under 42 U.S.C. §1983.

VII. THE SIXTH CIRCUIT'S CONCLUSION THAT UPON DUE CONSIDERATION, PETITIONERS' REMAINING CHARGES OF ERROR DO NOT CREATE AN INDEPENDENT BASIS FOR THIS COURT'S REVIEW WHERE SUCH CONCLUSION DOES NOT CONFLICT WITH ANY IDENTIFIED PRECEDENT OF THIS COURT, THE SIXTH CIRCUIT, OR OTHER FEDERAL CIRCUITS, IS INCORRECT.

Respondents' argument that the District Court searched for a reason for the inconsistent answers jury's interrogatories is without merit. The judge indeed could not find a valid reason for a finding of use of excessive force and a violation of constitutional rights because of the killing of Scott Tinch, but that these did not proximately cause Scott Tinch's state wrongful death. Respondents misapply Atlantic & Golf Stevedors, Inc. v. Ellerman Lines, Ltd., 369 U.S. 364 (1962). In that case, this Court found that the jury's verdict was consistent, and in such a case it is inappropriate to search for a view of the case that will make the verdict inconsistent. In the case at bar, the jury's verdict was inconsistent on its face, and was a result of improper jury instruction regarding proximate cause. Therefore, the Sixth Circuit's decision to not review this issue was error, and inconsistent with this Court's precedent.

Furthermore, Respondents make Petitioners' argument that bifurcation was not proper in their interpretation of the jury's answer to the interrogatories. Respondents state at page 20, "Thus, the finding of recklessness related to the officers' presence at the house in

the first place and the policies and undercover procedures, or lack thereof." Brief in Opposition, page 20. This interpretation makes the non-party City an intervening cause. Either way this Court chooses to interpret the jury's finding of use of excessive force but no proximate cause of death, the Sixth Circuit should have addressed one or both issues, and remanded for a new trial. For example, if the Respondents' interpretation above-quoted be true, then bifurcation was improper. If Petitioners' interpretation be true, (not that Petitioner disagrees with Respondents' interpretation), then the jury was not properly instructed with regard to proximate cause. See the interrogatories attached hereto.

In addition, Respondents' argument on page 21 that the jury only found the act of the officers going to the house in the first place unreasonable still does not explain the verdict, as the jury found that the officers used excessive force. The use of excessive force is obviously separate and apart from the act of going to the house. The jury obviously found more than just the act of going to the house reckless, because they found that excessive force was used in violation of Scott Tinch's constitutional rights. There is no question but the use of force proximately resulted in Scott Tinch's death.

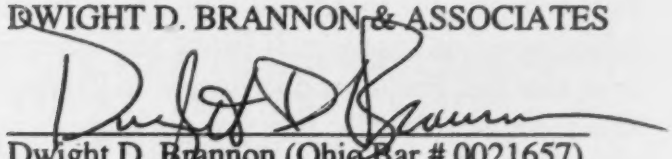
CONCLUSION

This Honorable Court should grant certiorari in the case at bar, as many conflicts of law exist, within the Sixth Circuit, among the Circuits, and between this Court and the Circuits. Precedent must be set which will allow for uniform decisions among the Circuits with regard to 42 U.S.C. §1983, on the critical issues to bifurcation, damages, and the other issues discussed herein and in the Petition submitted in the case at bar. The federal statute was meant to protect those citizens who have suffered a violation of their constitutional

rights at the hands of the state. As it stands, this statute, and its many loopholes depending on the Circuit, does not serve its intended purpose. A grant of certiorari would easily address these conflicts in circuits and deficiencies in application of 42 U.S.C. §1983.

Respectfully Submitted,

DWIGHT D. BRANNON & ASSOCIATES



Dwight D. Brannon (Ohio Bar # 0021657)
124 E. Third Street, Suite 100
Dayton, Ohio 45402
(513) 228-2306
Attorney for Plaintiffs/Petitioners

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #1
vs.	:	Section 1983: Excessive Force Claim (Michael Sipes)
MICHAEL J. SIPES, RUSSELL NEVILLE,	:	
Defendants.	:	

Has Plaintiff proved by the preponderance or greater weight of the evidence that Sipes was acting knowingly when Scott Tinch was shot and killed?

Yes ✓

No _____

(check applicable answer)

Pam Dreyer
Jerry F. Bailey
Brenda J. Martin
Don Zimbroski

Michael E. Lyons
Michael K. Cowan
Martin Tumey

If you have answered this Interrogatory "Yes", proceed to Interrogatory #2.

If you have answered this Interrogatory "No", proceed to Interrogatory #4.

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #2
vs.	:	Section 1983: Excessive Force Claim (Michael Sipes)
MICHAEL J. SIPES, RUSSELL NEVILLE,	:	To be answered only if you answered "Yes" to
Defendants.	:	Interrogatory #1.

Has Plaintiff proved by the preponderance or greater weight of the evidence that Sipes violated Scott Tinch's Fourth Amendment rights by using excessive force to seize him?

Yes ✓

No _____

(check applicable answer)

Paul Dressick — Michael E. Fee

Peggy C. Bing — Michael K. Cowans

Brenda Patton — Marlene Dawson

Ron Zimhower

If you have answered this Interrogatory "Yes", proceed to Interrogatory #3.

If you have answered this Interrogatory "No", proceed to Interrogatory #4.

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #3
vs.	:	Section 1983: Excessive Force Claim (Michael Sipes)
MICHAEL J. SIPES, RUSSELL NEVILLE,	:	To be answered only if you answered "Yes" to
Defendants.	:	Interrogatory #2.

Has Plaintiff proved by the preponderance or greater weight of the evidence that the violation of Scott Tinch's Fourth Amendment rights by Sipes through the use of excessive force to seize him was a proximate cause of the damage Plaintiff contends Scott Tinch suffered?

Yes ✓

No _____

(check applicable answer)

Tom Dremiah
Michael E. Fenton
Michael K Coates
Marlene Dawson
Ron Zimmerman

Regardless of your answer, proceed to Interrogatory #4.

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #4
vs.	:	Section 1983: Excessive Force Claim (Russell Neville)
MICHAEL J. SIPES,	:	
RUSSELL NEVILLE,	:	To be answered regardless of your answers to the previous
Defendants.	:	Interrogatories.

Has Plaintiff proved by the preponderance or greater weight of the evidence that Neville was acting knowingly when Scott Tinch was shot and killed?

Yes ✓

No _____

(check applicable answer)

Dawn Deremiah — Michael E. Lein
[illegible] — Michael K Counts
Brenda J. Masters — Marlene Davison
Ron Zimmerman — _____

If you have answered this Interrogatory "Yes", proceed to Interrogatory #5.

If you have answered this Interrogatory "No", proceed to Interrogatory #7.

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #5
vs.	:	Section 1983: Excessive Force Claim (Russell Neville)
MICHAEL J. SIPES,	:	
RUSSELL NEVILLE,	:	To be answered only if you answered "Yes" to
Defendants.	:	Interrogatory #4.

Has Plaintiff proved by the preponderance or greater weight of the evidence that Neville violated Scott Tinch's Fourth Amendment rights by using excessive force to seize him?

Yes _____

No ✓

(check applicable answer)

Tim Drescher
Michael E. Lois
Michael Events
Brenda Pastor
Marlene Dawson
Ron Zimbroski

If you have answered this Interrogatory "Yes", proceed to Interrogatory #6.

If you have answered this Interrogatory "No", proceed to Interrogatory #7.

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #7
vs.	:	State Claim: Wrongful Death Claim
MICHAEL J. SIPES RUSSELL NEVILLE	: :	(Michael Sipes)
Defendants.	:	To be answered regardless of your answers to the previous interrogatories.

Has Plaintiff proved by the preponderance or greater weight of the evidence that Sipes acted with malice, bad faith or in a wanton or reckless manner when Scott Tinch was killed?

Yes X RAB, MEL, [illegible], [illegible], MRC, M.O., RZ

No [redacted]

(check applicable answer)

[signature] [signature]

[signature] [signature]

[signature] [signature]

[signature] _____

If you have answered this Interrogatory "Yes", proceed to Interrogatory #8.

If you have answered this Interrogatory "No", proceed to Interrogatory #9.

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #8
vs.	:	State Claim: Wrongful Death Claim
MICHAEL J. SIPES, RUSSELL NEVILLE,	: :	(Michael Sipes)
Defendants.	:	To be answered only if you have answered "Yes" to Interrogatory #7.

Has Plaintiff proved by the preponderance or greater weight of the evidence that Sipes' malicious, bad faith or wanton or reckless actions were a proximate cause of Scott Tinch's death?

Yes _____

No X

(check applicable answer)

Pam Deverich

Michael E Sipes

Michael Counts

Marlene Dawson

Regardless of your answer to this Interrogatory, proceed to Interrogatory #9; and if you have answered this Interrogatory "Yes", be certain to answer Interrogatory #11.

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #9
vs.	:	State Claim: Wrongful Death Claim
MICHAEL J. SIPES, RUSSELL NEVILLE,	: :	(Russell Neville)
Defendants.	:	To be answered regardless of your answer to the previous Interrogatories.

Has Plaintiff proved by the preponderance or greater weight of the evidence that Neville acted with malice, in bad faith or in a wanton or reckless manner when Scott Tinch was killed?

Yes X AB, BEP, MEL, RJD, MKC, M.D., RZ

No [redacted]

(check applicable answer)

Ken Dworaiah
Craig G. Bailey
Brenda G. Master
Ron Zumbrunnen

Michael E. Lois
Michael Cicconetti
Marlene Dawson

If you have answered this Interrogatory "Yes", proceed to Interrogatory #10.

If you have answered this Interrogatory "No", and you have not answered "Yes" to Interrogatory #8, proceed to Interrogatory #13.

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KENNETH J. MURPHY
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93 APR -8 PM 4:08

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #10
vs.	:	State Claim: Wrongful Death Claim
MICHAEL J. SIPES, RUSSELL NEVILLE,	:	(Russell Neville)
Defendants.	:	To be answered only if you have answered "Yes" to Interrogatory #9.

Has Plaintiff proved by the preponderance or greater weight of the evidence that Neville's malicious, bad faith or wanton or reckless actions were a proximate cause of Scott Tinch's death?

Yes _____

No X

(check applicable answer)

Jean Dremiak
Bobby A. Bailey
Brenda G. Harden
Ross Zimmerman

Michael E. Lois
Michael Conant
Marlene Dawson

If you have answered "Yes" to this Interrogatory and/or to Interrogatory #8, proceed to Interrogatory #11.

If you have answered this Interrogatory "No" and have not answered "Yes" to Interrogatory #8, proceed to Interrogatory #13.

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KENNETH J. MURPHY
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93 APR -8 PM 4:09
U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #13
vs.	:	State Claim: Survival Action Claim
MICHAEL J. SIPES, RUSSELL NEVILLE,	:	(Both Defendants)
Defendants.	:	To be answered regardless of your answers to the previous Interrogatories.

Has the Plaintiff proved by the preponderance or greater weight of the evidence that Scott Tinch sustained conscious pain and suffering before he died?

Yes X

No _____

(check applicable answer)

If you have answered this Interrogatory "Yes", proceed to Interrogatory #14.

If you have answered this Interrogatory "No", your deliberations in this phase of the trial are complete.

FILED
KENNETH J. MURPHY
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93 APR -8 PM 4:09
U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #14
vs.	:	State Claim: Survival Action Claim
MICHAEL J. SIPES, RUSSELL NEVILLE,	: :	(Michael Sipes)
Defendants.	:	To be answered only if you have answered "Yes" to Interrogatory #13.

Has Plaintiff proved by the preponderance or greater weight of the evidence that Sipes acted with malice, in bad faith or in a wanton or reckless manner at the time of the shooting of Scott Tinch?

Yes X RAB, PJD, MEL, M.O, BCW MKC R.Z.

No [redacted]

(check applicable answer)

Jim Driscoll
Bradley A. Bailey
Brenda G. Martin
Ron Zimhoni

Michael E. Lieb
Michael Collins
Marlene Dawson

If you have answered this Interrogatory "Yes", proceed to Interrogatory #15.

If you have answered this Interrogatory "No", proceed to Interrogatory #16.

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #15
vs.	:	State Claim: Survival Action Claim
MICHAEL J. SIPES, RUSSELL NEVILLE,	: :	(Michael Sipes)
Defendants.	:	To be answered only if you have answered "Yes" to Interrogatory #14.

Has Plaintiff proved by the preponderance or greater weight of the evidence that Sipes' malicious, bad faith or wanton or reckless actions were a proximate cause of Scott Tinch's conscious pain and suffering before he died?

Yes ____

No ✓

(check applicable answer)

Pam Dreisiah — Michael E. Sipes

Richard Counts

Marlene Dawson

Ron Zimmerman

Regardless of your answer to this Interrogatory, proceed to Interrogatory #16, and, if you have answered "Yes" to this Interrogatory, be certain to answer Interrogatory #18.

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #16
vs.	:	State Claim: Survival Action Claim
MICHAEL J. SIPES, RUSSELL NEVILLE,	: :	(Russell Neville)
Defendants.	:	To be answered only if you have answered "Yes" to Interrogatory #13.

Has Plaintiff proved by the preponderance or greater weight of the evidence that Neville acted with malice, in bad faith or in a wanton or reckless manner at the time of the shooting of Scott Tinch?

Yes X

No _____

(check applicable answer)

Robert P. Briley — Michael E. Lieb

Dawn Dremiak — Michael Counts

Brenda J. Morton — Marlene Dawson

Ron Zimmerman — _____

If you have answered this Interrogatory "Yes", proceed to Interrogatory #17.

If you have answered this Interrogatory "No", and have not answered "Yes" to Interrogatory #15, your deliberations in this phase of the trial are complete.

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If you have answered "No" to this Interrogatory, and "Yes" to

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #17
vs.	:	State Claim: Survival Action Claim
MICHAEL J. SIPES, RUSSELL NEVILLE,	: :	(Russell Neville)
Defendants.	:	To be answered only if you have answered "Yes" to Interrogatory #16.

Has Plaintiff proved by the preponderance or greater weight of the evidence that Neville's malicious, bad faith or wanton or reckless actions were a proximate cause of Scott Tinch's conscious pain and suffering before he died?

Yes _____

No X

(check applicable answer)

Tom Dreesen
Barry G. Bayley
Brenda J. Marita
Ron Zimmerman

Michael C. Tinch
Michael Counts
Marlene Dawson

If you have answered "Yes" to this Interrogatory and/or to Interrogatory #15, proceed to Interrogatory #18.

If you have answered this Interrogatory "No" and have not answered "Yes" to Interrogatory #15, your deliberations in this phase of the trial are complete.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO 93 APR -8 PM 7:27
WESTERN DIVISION

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #1
vs.	:	Section 1983: Excessive Force Claim: Actual or Compensatory Damages
MICHAEL J. SIPES,	:	
RUSSELL NEVILLE,	:	
Defendants.	:	

What amount of actual or compensatory damages will reasonably compensate the estate of Scott Tinch for the damages suffered by Scott Tinch proximately caused by the deprivation of his Fourth Amendment rights when Sipes used excessive force to seize him, thus causing his death?

$ 111,000

(insert dollar amount)

Peggy A. Bailey — Michael E. Fois

Pam Devereaux — Michael Combs

Brenda McMath — Marlene Dawson

Ron Zimmerman

If you insert a dollar amount, proceed to Interrogatory #1A.

If you do not insert a dollar amount, your deliberations are complete.

IV.M14

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #1A
vs.	:	
MICHAEL J. SIPES, RUSSELL NEVILLE,	: :	Apportionment of Actual or Compensatory Damages
Defendants.	:	To be answered only if you have inserted a dollar amount in Interrogatory #1.

Of the total amount of damages you set forth on Interrogatory #1, what portion of that sum is for the following:

Conscious pain and suffering by Scott Tinch $ 25,000 *

Loss of enjoyment of life by Scott Tinch $ 86,000 *

*(insert dollar amount)

Regardless of your answer to this Interrogatory, proceed to Interrogatory #2.

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONYA TINCH,	:	Case No. C-3-89-263
Plaintiff,	:	Interrogatory #2
vs.	:	
MICHAEL J. SIPES, RUSSELL NEVILLE,	: :	Section 1983: Excessive Force Claim: Entitlement to Punitive Damages
Defendants.	:	To be answered regardless of your answer to Interrogatory #1A.

Has the estate of Scott Tinch proven by the preponderance or greater weight of the evidence its entitlement to an award of punitive damages against Sipes for his deprivation of Scott Tinch's Fourth Amendment rights?

Yes _____

No X

(check appropriate answer)

Tim Dreisbach
Brenda J. Mast
Ron Zimmerman
Michael E. Lewis
Michael Cornett
Marlene Dawson

If you answer "Yes" to this Interrogatory, proceed to Interrogatory #3.

If you answer "No" to this Interrogatory, your deliberations are complete.